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Attorney for Defendants
JPMORGAN CHASE & CO. and
CHASE BANK USA, N.A.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

STATE OF HAWAII, *EX. REL.*
DAVID M. LOUIE, ATTORNEY
GENERAL,

Plaintiff,

vs.

JPMORGAN CHASE & CO., CHASE
BANK USA, N.A. AND DOE

CIVIL NO. 12-00263 LEK-KSC
(Other Civil Action)

**DEFENDANTS' JOINT MOTION
TO FILE SUR-REPLY; EXHIBIT
1; CERTIFICATE OF SERVICE**

Hearing: November 19, 2012
Time: 9:45 a.m.
Judge: Hon. Leslie E. Kobayashi

EXHIBIT A

DEFENDANTS 1-20,

Defendants.

STATE OF HAWAII, *EX. REL.*
DAVID M. LOUIE, ATTORNEY
GENERAL,

Plaintiff,

vs.

HSBC BANK NEVADA, N.A., HSBC
CARD SERVICES, INC., and DOE
DEFENDANTS 1-20,

Defendants.

CIVIL NO. 12-00266 LEK-KSC
(Other Civil Action)

**DEFENDANTS' JOINT MOTION
TO FILE SUR-REPLY; EXHIBIT
1; CERTIFICATE OF SERVICE**

Hearing: November 19, 2012

Time: 9:45 a.m.

Judge: Hon. Leslie E. Kobayashi

STATE OF HAWAII, *EX. REL.*
DAVID M. LOUIE, ATTORNEY
GENERAL,

Plaintiff,

vs.

CAPITAL ONE BANK (USA) N.A.,
CAPITAL ONE SERVICES, LLC,
and DOE DEFENDANTS 1-20,

Defendants.

CIVIL NO. 12-00268 LEK-KSC
(Other Civil Action)

**DEFENDANTS' JOINT MOTION
TO FILE SUR-REPLY; EXHIBIT
1; CERTIFICATE OF SERVICE**

Hearing: November 19, 2012

Time: 9:45 a.m.

Judge: Hon. Leslie E. Kobayashi

STATE OF HAWAII, *EX. REL.*
DAVID M. LOUIE, ATTORNEY
GENERAL,

Plaintiff,

vs.

DISCOVER FINANCIAL SERVICES,
INC., DISCOVER BANK, DFS
SERVICES, L.L.C., AMERICAN
BANKERS MANAGEMENT
COMPANY, INC., and DOE
DEFENDANTS 1-20,

Defendants.

CIVIL NO. 12-00269 LEK-KSC
(Other Civil Action)

**DEFENDANTS' JOINT MOTION
TO FILE SUR-REPLY; EXHIBIT
1; CERTIFICATE OF SERVICE**

Hearing: November 19, 2012

Time: 9:45 a.m.

Judge: Hon. Leslie E. Kobayashi

STATE OF HAWAII, *EX. REL.*
DAVID M. LOUIE, ATTORNEY
GENERAL,

Plaintiff,

vs.

BANK OF AMERICA
CORPORATION, FIA CARD
SERVICES, N.A., and DOE
DEFENDANTS 1-20,

Defendants.

CIVIL NO. 12-00270 LEK-KSC
(Other Civil Action)

**DEFENDANTS' JOINT MOTION
TO FILE SUR-REPLY; EXHIBIT
1; CERTIFICATE OF SERVICE**

Hearing: November 19, 2012

Time: 9:45 a.m.

Judge: Hon. Leslie E. Kobayashi

STATE OF HAWAII, *EX. REL.*
DAVID M. LOUIE, ATTORNEY
GENERAL,

Plaintiff,

vs.

CITIGROUP INC., CITIBANK, N.A.,
DEPARTMENT STORES NATIONAL
BANK, and DOE DEFENDANTS 1-20,

Defendants.

CIVIL NO. 12-00271 LEK-KSC
(Other Civil Action)

**DEFENDANTS' JOINT MOTION
TO FILE SUR-REPLY; EXHIBIT
1; CERTIFICATE OF SERVICE**

Hearing: November 19, 2012

Time: 9:45 a.m.

Judge: Hon. Leslie E. Kobayashi

DEFENDANTS' JOINT MOTION FOR LEAVE TO FILE SUR-REPLY

Defendants CAPITAL ONE BANK (USA) NA (“COB”) and
CAPITAL ONE SERVICES, LLC, CITIGROUP, INC., CITIBANK, N.A.
 (“Citibank”), and DEPARTMENT STORES NATIONAL BANK; JPMORGAN
CHASE & CO. and CHASE BANK USA, N.A. (“Chase”); DISCOVER
FINANCIAL SERVICES, INC., DISCOVER BANK (“Discover”), and DFS
SERVICES, LLC; BANK OF AMERICA CORP. and FIA CARD SERVICES,
NA (“FIA”); and HSBC BANK NEVADA, N.A. (“HSBC”) and HSBC CARD
SERVICES, INC. respectfully request leave to file a short sur-reply to address a
new argument raised for the first time in Plaintiff’s reply brief.

In further support of this motion, Defendants state as follows:

1. Beginning on May 17, 2012, Defendants removed these cases to this Court. Certain defendants attached to their notices of removal declarations that provided supporting evidence demonstrating why this Court had jurisdiction over the actions. *See, e.g.*, No. 12-cv-263, Doc. 1-10 (Chase); No. 12-cv-268, Doc. 1-1 (Capital One); No. 12-cv-270, Doc. 1-7 (FIA).

2. Plaintiff filed motions to remand these actions to state court on June 15, 2012. Oral argument on those motions is scheduled for November 19, 2012.

3. In his opening memoranda in support of his motions to remand, Plaintiff never argued that this Court could not consider Defendants' declarations for purposes of determining whether this Court had jurisdiction over the action.

4. Defendants filed a joint opposition memoranda on October 29, 2012. *See* Doc. 75.

5. Plaintiff filed a joint reply memorandum on November 5, 2012. *See* Doc. 78. The Attorney General raised a new argument for the first time on reply, arguing that "it would constitute a violation of the well-pleaded complaint rule for the Court to consider evidence extrinsic to the Complaints in order to find federal question subject matter jurisdiction." *Id.* at 16-17.

6. Under Local Rule 7.4, "[a]ny argument raised for the first time in the reply shall be disregarded." To the extent this Court considers the Attorney

General's new argument, however, Defendants request leave to file a short sur-reply memorandum explaining why, under settled Ninth Circuit law, this Court may consider the declarations attached to Defendants' notices of removal. The proposed sur-reply is attached hereto as Exhibit 1.

7. Counsel for Chase has met-and-conferred with the Attorney General, who opposes this motion.

8. This motion is made in the interest of justice and not for any improper purpose or to cause undue delay.

Wherefore, this Court should permit Defendants to file the attached sur-reply memorandum to respond to Plaintiff's new argument on reply.

DATED: Honolulu, Hawai'i, November 14, 2012.

/s/ Thomas Benedict

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/s/ Michael C. Bird
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